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A New Insurance Dispute Resolution Mechanism: the Linked Litigation-Mediation Scheme in China

Zhen Jing*

Introduction

China's insurance industry has been growing rapidly with an annual growth rate of premium income of 16.5% over the last decade.¹ This rapid development of the insurance industry is accompanied with a dramatic increase of insurance disputes.² The increased insurance disputes have in turn greatly overloaded the people's courts, resulting in a significant delay in resolving insurance disputes by court. Moreover, cases that go to trial are far more costly to resolve and sometimes result in the insured incurring significant out of pocket expenses. Thus it is necessary to establish and improve multi-mechanisms for settling insurance disputes in a quick, fair, inexpensive, efficient, and effective manner.

For this sake, the Supreme People's Court of China (the SPC) and the China Insurance Regulatory Commission (the CIRC)³ jointly issued the "Notice on Carrying out Pilot Work of Establishing the Mechanism for Linking Litigation with Mediation for Insurance Disputes in Some Regions of China" (the SPC and the CIRC Notice 2012) on 18 December 2012.⁴ The pilot work of establishing the mechanism for linking litigation with mediation for insurance disputes was carried out jointly by the People's Courts, Insurance Regulatory Bureaus,⁵ and Insurance Associations⁶ in 32 regions in China.

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¹ Dagong Europe (<http://www.dagongeurooe.com>, accessed on 25 Feb 2017).

² For example, from 2005 to 2013, the insurance cases tried by the Court of East District of Beijing City increased at an annual rate of 40%. In 2014, insurance contract disputes and road traffic disputes tried by all courts in China reached 892,382 cases, 1.76 times of those tried in 2009. See China Insurance Newspaper, 12 May 2015 (http://pl.sinoins.com/2015-05/12/content_154597.htm, accessed on 26 Feb 2017).

³ The China Insurance Regulatory Commission was established on 18 November 1998 to act as the insurance supervision and regulation authority in China. It is authorized by the State Council to conduct administration, supervision and regulation of the Chinese insurance market, and to ensure that the insurance industry operates stably in compliance with law. For more on the regulation of insurance in China, see Z.Jing, *Chinese Insurance Contracts: Law and Practice* (1st edn., Informa Law from Routledge, 2017) p.45.

⁴ See <http://www.circ.gov.cn/web/site0/tab5245/info2350882.htm> (accessed on 5 March 2017).

⁵ A branch of the CIRC is called Insurance Regulatory Bureau. The CIRC has 36 branches with one branch at each province, autonomous region, or municipal cities, and 5 sub-branches in Tangshan of Hebei Province, Suzhou of Jiangsu Province, Wenzhou of Zhejiang Province, Yantai of Shandong Province and Shantou of Guangdong Province. Based on the authorized administrative functions, these branches and sub-branches under the direct leadership of the CIRC head office regulate the insurance markets within their respective jurisdictions, maintain the steady operation of local insurance markets and promote the sustainable and healthy development of the insurance industry in line with laws, regulations, guidelines and policies.

⁶ The Insurance Association of China (the IAC), established on 23 February 2001, is a national self-regulatory institution of insurance companies. The IAC operates at the national level. It has many local branches, such as Beijing Insurance Association, Shanghai Insurance Association etc. The main function of the insurance association is to assist the CIRC as an additional channel of regulatory control. As of May 31, 2017, there were 396 members in the IAC, including 12 group (holding) companies, 79 property insurance companies, 79 personal insurance companies, 10 reinsurance companies, 14 asset management companies, 54 insurance brokerage companies; 30 professional insurance assessment companies; 47 professional insurance agencies; 43

After more than 3-year's pilot work in these regions, a new mechanism for insurance dispute resolution – the Linked Litigation-Mediation Scheme (LLMS) – has been basically established in China. It has increasingly become a favoured alternative to the traditional and unlinked mediation and litigation. The SPC and the CIRC has decided to expand this mechanism to most cities in China. They jointly issued the “Opinions on Promoting the Construction of the Mechanism of Linking Litigation and Mediation for Insurance Disputes Nationwide in China” (the SPC and the CIRC Opinions 2016) on 14 November 2016.⁷

The LLMS is a new and unique mechanism with Chinese characters for insurance dispute resolution. To put it simple, the LLMS is to link insurance industry mediation with judicial mediation and adjudication to resolve insurance disputes. It is a connected and interactive platform on which insurance industry mediation, judicial mediation and adjudication are conducted. The establishment of the LLMS enables the people's courts, insurance regulators and insurance industry associations to form a concerted effort to overcome the drawbacks of the separate industry mediation and judicial mediation, so that the insurance disputes can be resolved in a more diversified and coordinated manner.

This article considers this new mechanism, its development, its features and advantages, its existing and potential issues and the way forward for the further strengthening of this mechanism.

Mediation has a long history in China, to begin with, this article gives a brief account of the concept of mediation in Chinese legal culture, it then moves on to consider the two limbs of the LLMS, i.e. insurance industry mediation and litigation (judicial mediation and adjudication). Finally a discussion on the new LLMS is presented in detail.

The concept of mediation in Chinese legal culture

Mediation is a process for resolving disputes by which a neutral third party called a mediator hears a dispute between two or more parties and attempts to assist the parties to settle their dispute without judging the merits of the case. It is an extension of the parties own negotiations and is sometimes referred to as a supercharged negotiation. The concept of mediation is deeply rooted in Confucianism which is essentially a philosophy of harmony, peace and conciliation. Confucianism stresses the virtue of yielding and compromise so as to avoid friction. Confucianism prizes the concept of ‘litigation-free’ (no litigation). Disputes should be resolved without jeopardizing ‘harmony’ of the parties and the society as a whole. These philosophical views have strongly influenced the Chinese way of life and its legal development. The influence has permeated the whole of Chinese history.⁸

In ancient China, the idea of mediation somewhat differs from modern concept of mediation. Mediators had the inherent mandate to maintain social order and educate the people on Confucian morals and the law. The role of mediator was not an impartial and neutral third

local insurance associations (including intermediary association) and 28 insurance-related institutions.

(<http://en.iachina.cn/col/col1732/index.html>, accessed on 8 November 2017)

As of on 1 March 2016, the IAC has a total of 360 members, of which, 11 group companies; 72 property insurance companies; 75 life insurance companies; 8 reinsurers; 13 asset management companies; 49 professional insurance brokers; 39 insurance assessment companies; 44 professional insurance agencies; 43 local insurance association (including intermediary association); and 16 insurance-related agencies companies. (<http://www.iachina.cn/about/>, accessed on 11 March 2017).

⁷ See <http://www.circ.gov.cn/web/site0/tab5168/info4050406.htm> (accessed on 2 March 2017).

⁸ Z.Jing, *Chinese Insurance Contracts: Law and Practice* (1st edn., Informa Law from Routledge, 2017) p.27.

party, but rather a mediator with a quasi-official mandate to advance the governing discourse and value system.⁹ The common term for mediation in imperial China is *tiao-chu*, which means a process that combines mediation with adjudicative discretions. The mediation processes were designed not just to provide an alternative to litigation, but also to showcase the moral virtues of resolving disputes in an amicable manner. The ‘didactic function’ of mediation epitomized the soft power of imperial rule: using the conciliation of community disputes to illustrate what the ‘desired norms’ of practice were and educate the public who were generally ignorant of the law and policies of the imperial state. To achieve these goals, the mediator must be prepared to be interventionist,¹⁰ evaluative¹¹ and even express his own views on what the moral, customary or legal norms were.¹² The traditional concept of mediation significantly influenced the modern day concept and practice of mediation.

In modern days, Chinese are also willing to seek mediation for resolving disputes. Chinese courts stick to the principle of “giving priority to mediation and combining mediation with judgement” and consequently judicial mediation is always given priority at all stages of the litigation process following the principles of voluntariness and lawfulness.¹³ The recent amended Civil Procedure Law of China (art.122)¹⁴ clearly sets forth that where the parties in a civil dispute make a lawsuit to the people’s court, if the dispute is suitable for mediation, then mediation shall be conducted first, except that any of the parties refuses to do so. As a result, more than half of the civil cases concluded by people’s courts are resolved by judicial mediation.¹⁵

In China, the main kinds of mediation include people’s mediation,¹⁶ administrative mediation,¹⁷ commercial mediation,¹⁸ industrial mediation, and judicial mediation. The latter two are discussed further below as they are the two limbs of the LLMS.

⁹ P.Chan, *the Position of Mediation in Contemporary Chinese Civil Justice: A Proceduralist Perspective*, PhD thesis, Maastricht University (2016) p.20.

¹⁰ A third party mediator who interferes between two contending parties to reconcile them or to persuade them to adjust or settle their differences.

¹¹ A mediator who practices evaluative mediation helps the parties in conflict arrive at a resolution by showing them the weaknesses in their case and evaluating what a judge or jury would be likely to decide if the case were brought to litigation. Focusing on legal rights of the parties instead of “fairness”, an evaluative mediator will likely meet with each party and their solicitor in separate meetings. The process of evaluative mediation usually involves a point-by-point evaluation of cost vs. benefits in deciding whether or not to pursue legal action in a case.

¹² Ibid.

¹³ Article 9 of the Civil Procedure Law of China 2012 provides “When adjudicating civil cases, the people’s courts may mediate the disputes according to the principles of voluntariness and lawfulness; if a mediation agreement cannot be reached, the courts shall render judgments without delay”. In 2010 the SPC issued a notice containing several opinions in this area, the Notice of the Supreme People’s Court on Issuing Several Opinions on Further Implementing the Work Principle of “Giving Priority to Mediation and Combining Mediation with Judgement” which requires all Chinese courts to give priority to mediation at all stage of the litigation process.

¹⁴ The Civil Procedure Law of the People’s Republic of China (the CPL) was adopted on 9 April 1991 at the Fourth Session of the Seventh National People’s Congress, and amended in 2007 and 2012).

¹⁵ For example, Supreme People’s Court statistics shows that in 2009, people’s courts concluded around 5.8 million civil cases. The percentage of civil cases resolved by judicial mediation at the first instance court level increased from 38.9% in 2008 to 62% in 2009 and 65.29% in 2010. See M.Tai and D. McDonald, “Judicial mediation in mainland China explained”. See <http://hsfnnotes.com/adr/2012/07/30/judicial-mediation-in-mainland-china-explained/> (accessed on 24 Feb 2017).

¹⁶ The statutory law governing people’s mediation is the People’s Mediation Law which was adopted on 28 August, 2010, and came into force on 1 January 2011. People’s mediation is the basic form of mediation for resolving minor private dispute by a People’s Mediation Committee, which is established by law and is a mass organization. The people’s mediation service is provided free of charge.

Insurance industry mediation

Insurance industry mediation refers to the process conducted by an insurance industry association as the main body of mediation, through persuasion and counseling to promote the parties voluntarily to reach a mediation agreement on the basis of equal consultation so as to resolve disputes arising from business activities in insurance industry. Most insurance disputes are basically contract related.¹⁹ The parties involved in the disputes are often the two contractual parties, i.e. the insurer and the insured. Sometime a third party may be involved under a liability or life insurance contract. The disputes are commonly due to misunderstandings about insurance terms, the coverage under the insurance policy, or breach of policy terms and conditions.

In 2007, the CIRC issued “the Guidance on Promoting the Pilot Work for Establishing a Quick Insurance Contract Dispute Resolution Mechanism”.²⁰ In the following years, insurance disputes mediation centres are established by the Insurance Association or/and the Insurance Regulatory Bureau in cities in China. For instance, on 25 March 2008, Beijing Insurance Association set up the Insurance Contract Dispute Mediation Committee.²¹ On 15 March 2012, Qingdao Insurance Association established the Qingdao City Insurance Contract Dispute Mediation Centre.²² The disputants can go to the Mediation Centre for the resolution of their disputes with the assistance of a mediator. If the disputants reach a settlement agreement, this agreement is as effective as a contract between the parties. If the parties cannot reach a settlement agreement, they will seek litigation to resolve their disputes.²³

Insurance industry mediation has its unique features. The first feature is the professionalism of the industry mediation. The parties involved in disputes usually turn to the insurance mediation centre for mediation of their disputes, mainly because the insurance association is very professional on the insurance-related matters, able to quickly and rationally resolve disputes between the parties. With rich experience in the insurance industry, the mediators are usually experts in the profession, so able to pick up the main issues of a dispute and to clarify the rights and obligations of the two sides from the legal and technical point of view

¹⁷ Administrative mediation refers to a process where mediation is conducted by relevant administrative bodies upon the request of the parties to assist them in reaching an agreement on the rights and obligations of each party. It involves the mediation of private disputes by government officials, such as disputes on intellectual property, consumer protection and some administrative decisions by government.

¹⁸ Commercial mediation is often conducted by an independent professional mediation institution to resolve large commercial disputes. In China, the largest professional commercial mediation body is the China Chamber of International Commerce (CCOIC) Mediation Centre, which is a part of China Council for the Promotion of International Trade, dedicating to resolving the cross-border disputes professionally, independently and impartially. It mainly mediates disputes arising from commercial and maritime transactions. If the contract of sale between the two commercial parties has a mediation clause, they will seek mediation for the first instance in the case of a dispute occurring.

¹⁹ From 2012 to May 2016, insurance contract disputes in each year accounted for 75%, 75%, 80%, 87%, and 92% of the total complains to the China Insurance Regulatory Commission. See Securities Daily Newspaper, (<http://www.ccstock.cn/jrjg/insurance/2016-06-16/A1466010396496.html>, accessed on 22 Feb 2017).

²⁰ See the CIRC website, <http://www.circ.gov.cn/web/site0/tab5225/info46039.htm>, accessed on 27 Feb. 2017.

²¹ See China Insurance Newspaper 7 July 2013 (http://xw.sinoins.com/2013-01/07/content_1573.htm, accessed on 8 November 2017).

²² See China Daily, 28 June 2013 (http://www.chinadaily.com.cn/dfpd/sd/bwzg/2013-06/28/content_16685013.htm, accessed on 22 Feb 2017).

²³ According to art. 24 of the Civil Procedure Law, a lawsuit for insurance contract dispute shall be under the jurisdiction of the people’s court located in the place where the defendant has his domicile or where the insured subject matter is located.

quickly, thus the rate of successful mediation of disputes is increased. The second feature is the relative authority of the industry mediation. Insurance association plays an important role of self-regulation and self-discipline within the industry. It requires its members to be fair and honest with their customers in conducting their business. This requirement is to a certain extent promote the success of the industry mediation. The discipline of dishonesty by the industry association can also provide a guarantee for the effectiveness of mediation. The third feature is the cost-effectiveness of the industry mediation. If the industry disputes go to the proceedings, the litigation costs will be much higher.

On the other hand, mediation agreement reached by the disputants with the assistance of an insurance medication centre only has the effect as a contract,²⁴ so it is not as enforceable as a court judgement. As a result, the compliance with the mediation agreement by the parties is not guaranteed. If one party to the agreement fails to honour his promise, the other party has to resort to litigation to resolve the dispute eventually.

Judicial mediation

Chinese courts²⁵ are empowered to undertake judicial mediation for civil cases. The same judge can act the dual roles of mediators and adjudicator in the same litigation. Judicial mediation is an integral and important part of a litigation process in China.²⁶ This is in contrast to the common law style mediation which although encouraged by the courts, is strictly a private matter for the disputants and a third party mediator that is not connected to the litigation.²⁷

The substantive law dealing with judicial mediation is provided in Chapter 8 (mediation) of the Civil Procedure Law (the CPL), which sets forth the basic principles and procedures for

²⁴ Article 1 of the Provisions of the Supreme People's Court Concerning Trying Civil Cases Relating to People's Mediation Agreement, which was published on 5 September 2002 and became effective of 1 November 2002. Article 10 of the Several Opinions of the Supreme People's Court on Establishing and Improving the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradiction and Disputes, which was issued 24 July 2009.

²⁵ In China, there are four levels of courts: Highest level– the Supreme People's Court; Provincial level– the high people's courts; the third level – intermediate people's court; and the forth level – basic people's courts. In addition, China has railway transportation courts, maritime courts, and IP courts at the intermediate people's court level. Generally, most civil lawsuits of first instance must be brought to the basic people's courts and appealed to the intermediate people's court. However, intermediate people's courts and high people's courts all have original jurisdictions in respect of certain types of disputes, such as when the amount of money in dispute exceeds certain thresholds, or the case has significant political or social effects.

²⁶ Article 2 of the Several Opinions of the Supreme People's Court on Further Displaying the Positive Roles of Litigation Mediation in the Building of a Harmonious Socialist Society 2007 provides “Litigation mediation is an important part of China's litigation system, an important way for the people's courts to exercise their trial power and an importance composition of harmonious jurisdiction. It is a way for settling disputes, which is rooted in China's historic and cultural tradition and has been proved as effective over a long period of judicial practice. It not only conforms to the current value and litigation awareness of the general public, but also embodies the Chinese nation's longing for harmonious natural order and social order. In recent years, the people's courts have improved their trial work to a large extent, accumulated precious experiences during the process, and established the principle of “mediating when possible, judging when necessary, combining mediation with judgment and solving the dispute once the case is concluded” as the guideline for civil trial work. The people's courts at various levels shall take “solving the dispute once the case is concluded” as the goal of trial work, correctly understand the status and roles of litigation mediation in their trial work and make great efforts to put litigation mediation work forward”.

²⁷ M.Tai and D. McDonald, “Judicial mediation in mainland China explained”, see <http://hsfnnotes.com/adr/2012/07/30/judicial-mediation-in-mainland-china-explained/> (accessed on 24 Feb 2017).

judicial mediation. The SPC has issued six main pieces of judicial guidance on mediation in the form of the SPC Opinions and Provisions,²⁸ including:

- (1) The Provisions of the SPC on Several Issues Concerning the Civil Mediation Work of the People's Court, which was issued on 16 September 2004.²⁹
- (2) The Several Opinions of the SPC on Further Displaying the Positive Roles of Litigation Mediation in Building of a Harmonious Socialist Society, which was issued on 1 March 2007.³⁰
- (3) The Notice of the SPC on Issuing Several Opinions on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment", which was issued on 7 June 2010.³¹
- (4) The Interpretations of the SPC Concerning the Application of the Civil Procedure Law of the People's Republic of China, which was issued on 18 December 2014 and came into force on 4 February 2015. Chapter 4 is concerned with mediation (articles 142 to 151).³²
- (5) The Provisions of the SPC on People's Court Invited Mediation, which was adopted on 23 May 2016 and became effective on 1 July 2016.³³
- (6) The Opinions of the SPC on the People's Court Further Deepening of Reform on Multi-Mechanisms for Dispute Resolution, which was issued on 28 June 2016.³⁴

Judicial mediation must strictly follow the principle of the voluntariness of the disputants. The courts distinguish between right and wrong and mediate disputes according to the principle of parties' voluntariness and based on clear facts.³⁵ If the parties are not willing to participate in the mediation or conciliation, the courts cannot compel it. When a court conducts mediation, a single judge or a collegial bench may preside in the mediation. Mediations shall be conducted locally whenever possible.³⁶ The court may request assistance from other relevant units or individuals to assist the people's court in mediation.³⁷ A judicial mediation agreement must be based on voluntariness of both parties, and shall not be reached through compulsion. The content of the mediation agreement cannot contravene the law.³⁸ When a mediation agreement is reached, the court shall draw up a written mediation statement, clearly setting forth the claims of the action, the facts about the case, and the result of the mediation. The mediation statement shall be signed by the judge and the court clerk, sealed by the people's court, and served on both parties. Once the mediation statement is signed and received by both parties, it becomes enforceable.³⁹ If no agreement is reached

²⁸ This SPC opinion and provisions are binding on lower courts and fills in many of the gaps in the Civil Procedure Law.

²⁹ See <http://www.china.com.cn/chinese/law/662178.htm> (accessed on 27 Feb 2017).

³⁰ See http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=89041 (accessed on 8 November 2017).

³¹ See http://news.xinhuanet.com/legal/2010-06/28/c_12271040.htm (accessed on 7 March 2017).

³² See <http://www.court.gov.cn/fabu-xiangqing-13241.html> (accessed on 27 Feb 2017).

³³ See <http://www.court.gov.cn/fabu-xiangqing-22752.html> (accessed on 25 Feb 2017).

³⁴ See <http://www.chinacourt.org/law/detail/2016/06/id/148740.shtml> (accessed on 27 Feb 2017).

³⁵ The CPL, art.93.

³⁶ The CPL, art.94.

³⁷ The CPL, art.95.

³⁸ The CPL, art.96.

³⁹ The CPL, art.97. The court need not draw up a mediation statement for the following cases when an agreement is reached through mediation: (a) Divorce cases in which both parties have become reconciled after mediation; (b) Adoption cases in which adoptive relationship has been retained through mediation; (c) Cases in which the claims can be immediately satisfied; and (d) Other cases that do not require mediation statements. Any agreement that does not require a mediation agreement shall be entered into the transcript and become

through mediation or if one party retracts his reconciliation before the mediation statement is served, the court shall render a judgment without delay.⁴⁰

In the course of litigation, the two parties in conflict have the option to reach a settlement agreement on their own by reconciliation.⁴¹ Where the parties concerned reach a settlement agreement by themselves during the process of litigation, the court may, following the application of the parties, confirm the agreement in accordance with the law and draw up a mediation statement (although the dispute was not settled by mediation of the court). Where the parties apply to the court for coordinating the reconciliation activities in the course of the reconciliation, the people's court may appoint the auxiliary staff of trial or invite or entrust the related entities and individuals to engage in the coordination activities.⁴²

The mediator's style of mediation can be facilitative,⁴³ evaluative⁴⁴ and even advisory.⁴⁵ The mediator should base on the specific circumstances of the case to take appropriate methods for mediation. He can help the parties to reach a settlement agreement by themselves. Sometimes he can put forward proposals to resolve the dispute. To facilitate the parties to reach a mediation agreement, the mediator can invite a person to attend the mediation who can be of help with the parties to reach a settlement agreement.⁴⁶ If the parties reach a mediation agreement on a part of the claim, the people's court may first confirm the agreement on that part and make a mediation statement.⁴⁷ Where the parties have reached a mediation agreement on the main part of the claim and request the people's court to put forward its opinions on the remaining part of the claim that has not been agreed on by the parties, and also have accepted the court's advice and decision, the court's opinion is taken as part of the mediation agreement and put into the mediation statement.⁴⁸

The major drawback of judicial mediation is related to confidentiality where a judge acting as mediator is required to keep the matters discussed in the mediation confidential. The SPC sets forth a rule that anything unfavourable disclosed in the mediation cannot be used against the party disclosing this information in the subsequent litigation process.⁴⁹ However, in practical terms, due to the dual roles of a judge, it is almost impossible to keep mediation confidential since the judge, while acting as adjudicator, will inevitably know the information disclosed to him during mediation. As a result, disputants may not open to compromise. This will

legally effective after the transcript is signed or sealed by both parties, the judge, and the court clerk (the CPL, art.98).

⁴⁰ The CPL, art.99.

⁴¹ The CPL, art.50.

⁴² Article 4 of the Provisions of the Supreme People's Court on Several Issues Concerning the Civil Mediation Work of the People's Court, which have been adopted at the 1321st meeting of the Judicial Committee of the People's Court 2004.

⁴³ Facilitative mediators assist the parties to find a solution through the process, leaving the active evaluation and articulation of views on the merits in the hands of the parties.

⁴⁴ See footnote 11.

⁴⁵ Advisory (or directive) mediation is a subset of evaluative mediation that relies on a person bringing expertise in a particular field to meet with disputants and encourage them to negotiate. This expert also collects alleged facts, evidence and arguments, and gives information, opinion and advice.

⁴⁶ The Provisions of the Supreme People's Court on People's Court Invited Mediation 2016, art.17.

⁴⁷ The Provisions of the Supreme People's Court on Several Issues Concerning the Civil Mediation Work of the People's Court, art.17.

⁴⁸ Ibid.

⁴⁹ Some Provisions of the Supreme People's Court on Evidence in Civil Procedure 2001, art.67.

adversely affect the disputants' free expression and willingness to make concessions during mediation, thereby undermining the chances of a successful mediation.⁵⁰

The newly developed LLMS successfully overcomes the drawbacks of the insurance industry mediation and the judicial mediation. This can be seen below.

The LLMS for insurance disputes resolution

For the purpose of construction and operation of the LLMS for the resolution of insurance disputes, the SPC and the CIRC requires the people's courts, Insurance Regulatory Bureaus and Insurance Associations to adhere **four** basic principles.⁵¹ First, the principle of lawfulness and fairness, the LLMS should be carried out in accordance with the law, administrative regulations and judicial interpretations, and shall not prejudice the lawful rights and interests of the parties and other interested parties, shall not violate the basic principles of the law, and shall not harm the public interests. Second, the principle of voluntariness, the wishes of the parties concerned must be fully respected. No compulsory mediation shall be conducted, so as to protect the parties' own civil and litigation rights. Third, the principle of efficiency and convenience for people, the conduct of the LLMS should pay attention to work efficiency; in light of the actual circumstances of disputes, the mediation method, time and place shall be flexibly determined so as to provide convenience for the parties and reduce the costs of the parties for settling disputes.

If the parties in conflict do not want their dispute to be resolved by a court, they may go to an insurance mediation centre to ask for assistance to settle their dispute and reach a mediation agreement. The mediation agreement can be confirmed by the court. The confirmed mediation agreement is as enforceable as a judgement by the court.⁵² In this situation, the linkup between the independent mediation and judicial activities seems to be the parties' application for and the judicial confirmation of the mediation agreement. The "contract" (mediation agreement) is somehow converted to "judgement" by judicial confirmation in terms of enforceability. The linkup of insurance industry mediation and the judicial confirmation of mediation agreement effectively overcomes the drawback of the separate industry mediation, i.e. lack of enforceability of the mediation agreement.

If a party, such as an insured whose claim for insurance payment under the insurance policy is unreasonably rejected by the insurer, does not know the idea and the service of industry mediation and turns to court for a lawsuit. The court can, prior to filing the case, inform him of the idea and the service of mediation. If the parties (such as the insured and the insurer) are willing to resolve their dispute through mediation, the court will designate an insurance mediation centre to conduct the mediation process, helping the parties settle their dispute. This process is called *court-designated mediation*.⁵³

In the case that the lawsuit is accepted and docketed by the court, the parties can still have the option to mediation. If they agree to mediate, the court will entrust an independent third party (such as an Insurance Dispute Mediation Centre) to conduct the mediation. This process is

⁵⁰ J. Lee, "Mediation in mainland China and Hong Kong: Can They Learn from Each Other?" (2014) *Asian-Pacific Law and Policy Journal*, 16(1), p.109.

⁵¹ The Opinions of the Supreme People's Court and the China Insurance Supervisory Commission on Promoting the Construction of the Mechanism of Linking Litigation and Mediation for Insurance Disputes Nationwide in China 2016, s.1(2),

⁵² The Provisions of the SPC on People's Court Invited Mediation 2016, art.25(2).

⁵³ The SPC and the CIRC Notice 2012, s.9.

termed as *court-entrusted mediation*.⁵⁴ This is in effect a delegation of the court's mediation powers and provides an alternative to judicial mediation.

The mediation agreement reached by the parties through the court-designated mediation can be confirmed by the court in accordance with the law.⁵⁵ Where a mediation agreement is reached by the parties through the court-entrusted mediation, the court shall issue a mediation statement to the parties.⁵⁶ If no mediation agreement can be reached by the parties, the court will proceed to docket the case (where the case has not been docketed), or make a judgement for the case (where the case has been already docketed).⁵⁷ The litigation and mediation processes are then effectively and seamlessly linked up by the court-designated mediation, the court-entrusted mediation, the court's confirmation of mediation agreement and the adjudication. These processes are the essential components of the LLMS which merit a further consideration.

The development of the LLMS

As early as in 2009, the SPC, for the first time, attempted to promote the linkup of litigation and non-litigation (mediation or arbitration) mechanism for resolution of contradictions and disputes. The SPC has so far issued two pieces of judicial guidance specifically on the linkup of litigation and non-litigation.

- (1) Several Opinions of the Supreme People's Court on Establishing and Improving the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradictions and Disputes, which was issued on 24 July 2009.⁵⁸
- (2) The Notice of the Supreme People's Court on Issuing the Overall Plan on Expanding the Pilot Reform on the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradictions and Disputes, which was issued on 10 April 2012.⁵⁹

The Pilot Work on the linkup of litigation and non-litigation began in May 2012 in Beijing, Shanghai, Tianjin, Chongqing, and many other cities in 25 provinces.⁶⁰

At the same time, the SPC and the CIRC, for the first time, attempted to promote the pilot work on the construction of linking litigation and mediation for resolution of insurance disputes. As mentioned earlier, they jointly issued the "Notice on Carrying out Pilot Work of Establishing the Mechanism for Linking Litigation with Mediation for Insurance Disputes in Some Regions of China" (the SPC and the CIRC Notice 2012) on 18 December 2012.⁶¹

There are a number of reasons for insurance industry to be chosen as the first pilot work on the LLMS: First, almost every family purchase insurance products, to establish fair, quick, effective and diversified channels for resolution of insurance disputes is very important for maintaining the stability and harmony of the society. Secondly, insurance disputes are most often contract related, the rights and obligation between the insurer and the insured are relatively clear under the insurance contracts, so it is relatively convenient for the disputes to

⁵⁴ The SPC and the CIRC Notice 2012, s.10.

⁵⁵ The SPC and the CIRC Notice 2012, s.9.

⁵⁶ The SPC and the CIRC Notice 2012, s.10(2).

⁵⁷ The SPC and the CIRC Notice 2012, s.9 and s.10.

⁵⁸ See <http://www.court.gov.cn/fabu-xiangqing-594.html> (accessed on 25 Feb 2017).

⁵⁹ See http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=200533 (accessed on 8 November 2017).

⁶⁰ Ibid.

⁶¹ See <http://www.circ.gov.cn/web/site0/tab5245/info2350882.htm> (accessed on 5 March 2017).

be settled by mediation. Thirdly, insurance companies usually have financial ability to make payment, so they are able to perform their obligation once the mediation agreement have been made. This enhances, to some extent, the practicality of the LLMS. Fourthly, the Insurance Regulatory Commission and Insurance Associations require the insurance companies to be fair and honest with their customers in conducting their business. This requirement promotes the success of the insurance mediation. The discipline of dishonesty by the Insurance Associations can also provide a kind of guarantee for the effectiveness of mediation. Finally, given that the number of insurance disputes is large but the amount in terms of money for each claim is relatively small, lawsuits of insurance disputes consume a great amount of litigation resources, take more time, negatively affect the overall image of the insurance industry, and limit the healthy development of the insurance industry. Thus, it is relatively more urgent to carry out the pilot work on the establishment of the LLMS for insurance disputes than for other kinds of disputes.

The pilot work started in 32 regions. The SPC and the CIRC Notice 2012 requires that the LLMS shall be established by adopting the way of experiment before popularization. The courts and insurance regulatory bodies in pilot regions shall actively make exploration, steadily promote the mechanism, diligently summarize and accumulate experience, and where conditions permit, gradually popularize the LLMS in other regions of the country.⁶²

In fact, well before the publication of the SPC and the CIRC Notice 2012, Beijing Insurance Association established an Insurance Dispute Mediation Committee on 25 March 2008,⁶³ with the purpose of opening a new channel for insurance disputes resolution. This new channel received considerable interest of the Intermediate People's Court at the East City of Beijing. In the same year, this Court invited the Insurance Dispute Mediation Committee to join judicial mediation. This was the first attempt for linking litigation with mediation for resolving insurance disputes. By the end of 2012, this linked litigation and mediation mechanism was adopted by 13 courts in Beijing, accounting for 81% of the total courts in the City.⁶⁴

Following the guidance of the SPC and the CIRC Notice 2012, as many as 478 Insurance Dispute Mediation Centres were established in many cities by the end of 2014.⁶⁵ It was reported that by the end of 2014 in the whole country, 21,000 insurance cases were mediated by the court-designated mediation and 32,000 insurance cases by the court-entrusted mediation, of which 27,000 cases were successfully settled by the mediations.⁶⁶ The pilot work on the linking up litigation and mediation was proved to be very successful in China. The establishment and application of the LLMS in the 32 regions effectively eased the pressure on the courts by the heavy load of insurance cases,⁶⁷ saved judicial resources, improved the reputation of the insurance industry, and promoted harmony of the society.⁶⁸

⁶² The SPC and the CIRC Notice 2012, s.4.

⁶³ See China Insurance Newspaper 7 July 2013 (http://www.anjielaw.com/jobs_detail/newsId=137.html, accessed on 1 March 2017).

⁶⁴ Ibid.

⁶⁵ See China Insurance Newspaper, 12 May 2015 (see http://pl.sinoins.com/2015-05/12/content_154597.htm, accessed on 1 March 2017).

⁶⁶ Ibid.

⁶⁷ For example, cases relating to insurance contract disputes and road traffic accident disputes which were settled by judgement at all the courts in Chongqing City decreased 30% and 25% respectively in 2014 than in 2013. (See China court website, <http://www.chinacourt.org/article/detail/2016/11/id/2348597.shtml>, accessed on 3 March 2017).

⁶⁸ Ibid.

As mentioned earlier, after successful completion of the pilot work, the SPC and the CIRC jointly issued the “Opinions on Promoting the Construction of the Mechanism of Linking Litigation and Mediation for Insurance Disputes Nationwide in China” (the SPC and the CIRC Opinions 2016)⁶⁹ to promote the establishment of the LLMS nationwide in China.

The platform of the LLMS

The people’s courts, the Insurance Regulatory Bureaus and Insurance Associations have different responsibilities in constructing the platform and carrying out mediation on the platform of the LLMS.

The people’s courts invite the qualified mediation centres and individual mediators to join the register of the invited mediation organizations. The courts may invite the delegates of the National People’s Congress, members of Chinese People’s Political Consultative Conference, people’s jurors, experts and scholars, lawyers, arbitrators, retired legal practitioners and other qualified individuals to join the invited mediators register.⁷⁰ The register contains the details of mediation centres and individual mediators for the parties in dispute to choose. The courts shall issue certificates to those whose details are included in the register. The register established by a court can also be used by a lower court.⁷¹

The courts also bear the following duties in the LLMS: (i) to guide the parties to choose the mediation centres or individual mediators from the register; (ii) to guide the work of a mediation centre and mediators; (iii) to manage the flow of mediation cases and register the relevant data; (iv) to provide the necessary places, office facilities and other related services for mediation; (v) to organize training of the mediators; (vi) to organize the evaluation of mediation performance; and (vii) to undertake other duties related to the LLMS.⁷²

The Insurance Regulatory Bureaus are responsible for guiding the Insurance Associations to establish and improve the LLMS and to promote standardization of the Insurance Mediation Centres. The Insurance Associations shall submit to the local Insurance Regulatory Bureaus a list of the mediation centres, individual mediators for record. The Insurance Regulatory Bureaus then submit the list to the courts for them to establish the register containing the detail of the mediation centres and individual mediators in the region.⁷³

The Insurance Associations shall formulate the rules and regulations for the management of the mediation centres, establish the evaluation mechanism for the evaluation of the performance of the mediation centres, raise and manage funds of the mediation centres, formulate the standard for the use of the funds, guide the mediation centres to formulate and improve the mediation rules, management of archives, statistics and other systems to strengthen the hardware and software construction of the mediation centres.⁷⁴

The Insurance Mediation Centres shall establish and improve the system for the mediator selection, certification, training, assessment, rewards and punishments, and resignation. The Centres select skilled and experienced staff for the organization and implementation of mediation work. The Centres are responsible for establishing a pool of mediation experts,

⁶⁹ See <http://www.circ.gov.cn/web/site0/tab5168/info4050406.htm> (accessed on 2 March 2017).

⁷⁰ The Provisions of the SPC on People’s Court Invited Mediation 2016, art.6.

⁷¹ The Provisions of the SPC on People’s Court Invited Mediation 2016, art.5.

⁷² The Provisions of the SPC on People’s Court Invited Mediation 2016, art.3.

⁷³ The SPC and the CIRC Opinions 2016, s.(4).

⁷⁴ The SPC and the CIRC Opinions 2016, s.(5).

organizing relevant professionals to provide guidance to specific mediation work, and planning the training of the mediators as part of the annual work schedule in order to improve the mediators' professional morality, legal knowledge, insurance knowledge and mediation skills.⁷⁵

The mediation can be conducted in the mediation office in the court, or in the Insurance Mediation Centre, or any other place agreed by the two parties and upon the approval by the court.⁷⁶ The courts and the Insurance Mediation Centres are encouraged to set up a one-station dispute resolution model, which means that the mediation and litigation are carried out at one station (i.e. at a court) to promote the rapid handling of disputes and to effectively reduce the burden on the disputants. The one-station model is particularly suitable for handling disputes on traffic accidents and medical insurance.⁷⁷

The procedure of the LLMS

The procedure of the LLMS can be classified into two types: the procedure for court-designated mediation which occurs prior to the filing of the insurance case by the court and the procedure for court-entrusted mediation which occurs after the dispute has been docketed (registered) by the court.

(A) The procedure for court-designated mediation includes 4 steps:⁷⁸

(1) Court guidance. After receiving a written writ or verbal lawsuit for an insurance dispute, before the filing of the case, the court shall guide the parties to choose mediation as the means to resolve the dispute. If the parties agree to mediate prior to the filing of the case, they shall fill in an application form for mediation, and sign the form to confirm their willingness to go for the mediation. Alternatively, the court shall issue a "pre-filing mediation proposal" or a "pre-filing mediation confirmation form" and request the parties to sign it for confirmation of their willingness for the mediation. The parties can choose a mediator from the register containing the details of the mediators. If the two parties do not agree on who will act as the mediator, the court or the Mediation Centre will appoint a mediator. If the two parties do not agree with the appointed mediator, they are deemed not to be willing to enter into mediation.⁷⁹ If the parties expressly disagree with the mediation, the court shall docket the case according to law.⁸⁰

(2) Court designation. The court shall send a mediation letter and related materials to an Insurance Dispute Mediation Centre, requesting the Centre to carry out mediation.

(3) Conduct of mediation. The mediator chosen by the two parties conducts mediation according to the mediation procedure.⁸¹ The mediation is usually carried out by one mediator. For a case which is important, difficult, complex, or where the parties concerned require mediation by two or more mediators, it may be mediated by two or more mediators. The Mediation Centre or the court will appoint one of the two mediators to chair the mediation. If the parties have justified reasons, they may apply for the

⁷⁵ The SPC and the CIRC Opinions 2016, s.(6).

⁷⁶ The Provisions of the SPC on People's Court Invited Mediation 2016, art.14.

⁷⁷ The SPC and the CIRC Opinions 2016, s.(7).

⁷⁸ The SPC and the CIRC Opinions 2016, s.(9).

⁷⁹ The Provisions of the SPC on People's Court Invited Mediation 2016, art.12.

⁸⁰ Ibid.

⁸¹ A mediation Centre has its own rules and procedure for conducting the mediation.

replacement of the mediators.⁸² If the parties reach an agreement, the Mediation Centre shall draw up a mediation agreement which is signed by the mediator and the parties. If no agreement can be reached, the Mediation Centre shall reply to the court in a timely manner. If the parties apply for filing a case, the court shall register the case in accordance with the law.⁸³ The case will go for trial.

(4) Judicial confirmation. Where the parties apply for judicial confirmation of the mediation agreement, the court shall review of the mediation agreement according to the law to confirm the effectiveness of the mediation agreement.⁸⁴

(B) The procedure for court-entrusted mediation includes 2 steps:⁸⁵

(1) Court entrustment. Where the case has been docketed by the court, according to the circumstances of the case, with the consent of both parties, the court can entrust an Insurance Mediation Centre to conduct the mediation. The court shall write a letter of entrustment to the Centre, which include the name of the court and the name of the judge who is in charge of the case, the name of the two parties, the cause of action and the case briefing, and transfer to the Centre a copy of the writ, the pleadings, the main evidences, inventory of the documents and other relevant materials.

(2) Conduct of mediation. The mediator chosen by the two parties conducts the mediation. If the parties reach an agreement, the Mediation Centre shall draw up a mediation agreement which is signed by the mediator and the parties. The Centre shall report to the court the outcome of the mediation and return all the documents to the court in a timely manner. The court shall issue a mediation statement to the parties, which is as enforceable as the judgment by the court.⁸⁶ In the case that no mediation agreement can be reached by the parties, the court will hear the case without delay.⁸⁷ In this process, the linkup of litigation and mediation can be viewed at two circumstances: in the case of a successful mediation, the mediation agreement drawn by the Mediation Centre and signed by the two parties is converted to the mediation statement by the court; in the case of an unsuccessful mediation, the dispute goes into litigation process without delay.

Mediation procedure, confidentiality and limitation period of the LLMS

(A) Mediation procedure

At the beginning of the mediation, the mediator should inform the parties of the rights and obligations, mediation rules, mediation procedures, the effectiveness of the mediation agreement, the application for judicial confirmation of the mediation agreement and other relevant matters.⁸⁸

In order to maintain the neutrality and fairness of the mediation, the mediator must recuse from the mediation, and the parties have the right to apply for the recusal of the mediator

⁸² The Provisions of the SPC on People's Court Invited Mediation 2016, art.13.

⁸³ The SPC and the CIRC Opinions 2016, s.(9).

⁸⁴ This will be further considered below.

⁸⁵ The SPC and the CIRC Opinions 2016, s.(10).

⁸⁶ The Provisions of the SPC on People's Court Invited Mediation 2016, art.25(2).

⁸⁷ The SPC and the CIRC Opinions 2016, s.(10).

⁸⁸ The Provisions of the SPC on People's Court Invited Mediation 2016, art.14.

under the following circumstances:⁸⁹ (1) the mediator is a close relative of a party or the agent of the party; (2) the mediator has an interest in the dispute; and (3) the mediator has a connection with a party or the agent of the party, which may affect the fairness of the mediation. The recusal of the mediator is decided by the Mediation Centre or the court.

The mediator shall, in accordance with the specific circumstances of the case, adopt appropriate means for mediation. The mediation process is relatively informal but the procedure is similar to the conduct of a trial with the parties making submissions and putting forward evidence. The mediator will meet separately with the parties to discuss the relative strengths and weaknesses of the parties' cases and seek to broker a settlement between the parties. The mediator can also propose solutions for the settlement of the dispute. In order to facilitating the parties to reach a settlement agreement, the mediator can invite other person, who can help with the mediation, to attend the mediation.⁹⁰

Where the mediator finds that it is possible that the two parties are carrying out a false mediation, he shall suspend the mediation and report to the court or the Mediation Centre. The court or the Mediation Centre shall, after receiving the report, examine it in a timely manner and handle it in accordance with the relevant provisions.⁹¹

In any of the following circumstances, the mediator shall terminate the mediation:⁹² (1) the parties have reached a mediation agreement; (2) a party withdraws a mediation request or expressly does not accept mediation; (3) the mediator thinks that the difference between the parties on the dispute is so large that it is difficult to reach a mediation agreement; and (4) other circumstances that causes difficulty to carry out the mediation. If the mediator terminates the mediation, he shall report in writing to the court and return the relevant materials to the court.

A mediator shall not have any of the following acts:⁹³ (1) compelled mediation; (2) illegal mediation; (3) accepting entrustment or receiving property from the parties; (4) disclosing the mediation process or the contents of the agreement; (5) other acts that violate the professional ethics of the mediator. If the parties find that the above circumstances occur, he may file a complaint to the court. If the complaint is proved to be true upon investigation, the court shall correct the mediator's misconduct and make a warning, notification, delisting or other treatment to the mediator.

(B) Confidentiality.

The mediation process is not open to the public, except where the parties require or agree to a public mediation.⁹⁴ The Mediation Centre, the mediator and the court staff responsible for the administration of mediation shall not disclose the relevant information of the mediation process and shall not testify in the subsequent proceedings about the case. The parties cannot, in the subsequent proceedings of the same case, use as evidence of the note he made during the mediation process, the concessions or promises made by parties in order to reach the settlement agreement, and the opinions or suggestions made by the mediator, except in the

⁸⁹ The Provisions of the SPC on People's Court Invited Mediation 2016, art.15.

⁹⁰ The Provisions of the SPC on People's Court Invited Mediation 2016, art.17.

⁹¹ The Provisions of the SPC on People's Court Invited Mediation 2016, art.18.

⁹² The Provisions of the SPC on People's Court Invited Mediation 2016, art.26.

⁹³ The Provisions of the SPC on People's Court Invited Mediation 2016, art.28.

⁹⁴ Several Opinions on Establishing and Improving the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradiction and Disputes 2009, art.19.

following circumstances: (1) both parties agree; (2) the law permits clearly; and (3) the court considers it necessary for the purpose of protecting the national interests, the public interests and the legitimate rights and interests of outsiders.⁹⁵ The mediator shall not be a juror, a litigation agent, a witness, an expert and a translator of the case in subsequent proceedings.⁹⁶

The SPC promotes the proper separation of mediation and adjudication and establishes a mechanism which separates mediation and adjudication for the same case in terms of procedure and personnel. The judge who was engaged in mediation at the stage of docketing the case shall not, in principle, be involved in the subsequent adjudicating of the same case. In the course of the hearing of the case, if the parties still have the intention for mediation of their case, the judge who is adjudicating the case can conduct judicial mediation.⁹⁷

As mentioned earlier, the major drawback for judicial mediation is the compromise of the confidentiality of the mediation, due to the dual roles of a judge, it is almost impossible to keep mediation confidential since the judge, while acting as adjudicator, will inevitably know the information disclosed to him when acting as a mediator. The separation of mediation and adjudication for the same case in terms of procedure and personnel in the LLMS effectively overcomes the drawback of the traditional judicial mediation. The court-entrusted mediation ensures that the mediation is carried out by a neutral third party mediator, not the judge. Even if the mediation is carried out in the court by a judge, in the case of unsuccessful mediation, the same judge cannot be involved in the subsequent adjudication of the same case.

(C) Limitation period.

The Mediation Centre shall complete the mediation within 20 working days from the date of accepting the case from the court (the time taken for disability evaluation, loss assessment etc. is not included in the 20-day time limit). With the consent of the parties, the 20-day time limit may be extended, but the extension is no more than seven working days.⁹⁸

Mediation agreements

If a matter settles, the Mediation Centre will draw up a formal mediation agreement containing the basic information of the two parties, the facts and issues of the dispute, and the outcome of the mediation.⁹⁹ If the parties think that it is unnecessary to draw up a formal mediation agreement, an oral agreement can be used instead, the mediator must write down the content of the oral agreement.¹⁰⁰ The mediation agreement must be signed by the two parties and the mediator and sealed by the Mediation Centre.¹⁰¹

The mediation agreement reached through court-designated mediation becomes effective from the moment when the two parties signed the agreement.¹⁰² The court-entrusted

⁹⁵ Several Opinions on Establishing and Improving the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradiction, art.19. The Provisions of the SPC on People's Court Invited Mediation 2016, art.22.

⁹⁶ The Provisions of the SPC on People's Court Invited Mediation 2016, art.16.

⁹⁷ The Opinions of the SPC on the People's Court Further Deepening of Reform on Multi-Mechanisms for Dispute Resolution 2016, s.30.

⁹⁸ The SPC and the CIRC Opinions 2016, s.11.

⁹⁹ The Provisions of the SPC on People's Court Invited Mediation 2016, art.24.

¹⁰⁰ The Provisions of the SPC on People's Court Invited Mediation 2016, art.23.

¹⁰¹ The Provisions of the SPC on People's Court Invited Mediation 2016, art.24.

¹⁰² Ibid.

mediation statement becomes legal binding once the mediation statement is received by the parties.¹⁰³ If the two parties receive the mediation statement at a different date, the latest date is the effective date.¹⁰⁴

A mediation agreement is a private contract between the parties. If a dispute occurs on the content or the performance of the agreement, a party to the agreement can make a lawsuit to a court on the matter of the agreement, the court shall hear the case. If any one of the two parties makes a lawsuit on the basis of the original dispute (which was settled by the mediation agreement), the other party who defends himself by the mediation agreement must provide a copy of the agreement.¹⁰⁵

If the parties have reached a reconciliation agreement on their own or a mediation agreement with the assistance of a mediator, they request the court to issue a judgement statement according to the reconciliation agreement or the mediation agreement; the court shall not uphold such a request.¹⁰⁶

Judicial confirmation of the mediation agreement

Judicial confirmation of mediation agreement is an important component of the LLMS. The first statutory law setting forth provisions on judicial confirmation of mediation agreement is the People's Mediation Law of China (the PML),¹⁰⁷ According to the PML, a mediation agreement reached by the parties with the mediation of the People's Mediation Committee is legally binding, the parties shall perform the obligations as agreed.¹⁰⁸ The parties may apply to people's courts for judicial confirmation of the agreement within 30 days from the date of the agreement becoming effective, the people's court shall promptly review the agreement, and confirmed its effectiveness according to relevant laws.¹⁰⁹ Where the people's court has confirmed that the mediation agreement is valid, if one of the parties refuses to perform the duties or not fully comply with the agreement, the other party may apply to the people's court for enforcement.¹¹⁰

The similar rules are also adopted in the recent amendment of Civil Procedure Law in 2012. Where judicial confirmation of a mediation agreement is to be applied for, the two parties shall, in accordance with the People's Mediation Law and other laws, within 30 days from the date of entry into force of the mediation agreement, jointly submit their application to the basic people's court.¹¹¹ The people's court shall examine the agreement and confirm the validity of the mediation agreement. If a party refuses to perform or fails to perform the whole of the court-confirmed agreement, the other party may apply to the people's court for

¹⁰³ The CPL, art.97.

¹⁰⁴ The Interpretations of the SPC Concerning the Application of the Civil Procedure Law of the People's Republic of China 2014, art.149.

¹⁰⁵ The Provisions of the SPC on People's Court Invited Mediation 2016, art.25. The Notice of the Supreme People's Court on Issuing the Overall Plan on Expanding the Pilot Reform on the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradiction and Disputes 2012, art.10.

¹⁰⁶ The Provisions of the SPC on Several Issues Concerning the Civil Mediation Work of the People's Court 2004, art.18.

¹⁰⁷ The People's Mediation Law of the People's Republic of China was adopted at the 16th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on August 28, 2010, and came into force on January 1, 2011.

¹⁰⁸ The People's Mediation Law, art.31

¹⁰⁹ The People's Mediation Law, art.33.

¹¹⁰ Ibid.

¹¹¹ The Civil Procedure Law, art, 194.

enforcement. If the mediation agreement does not meet the requirements of the law, the court shall reject the application for confirmation. The parties concerned may bring a lawsuit against the court's rejection of confirmation of the agreement, or alter the original mediation agreement by mediation and reach a new mediation agreement.¹¹²

For a mediation conducted by an independent mediation centre or a court-designated mediation, where the parties apply for judicial confirmation of the mediation agreement, the court shall, in accordance with the Several Opinions of the SPC on Establishing and Improving the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradiction and Disputes 2009, the Opinions of the SPC on the People's Court Further Deepening of Reform on Multi-Mechanisms for Dispute Resolution 2016, and the relevant provisions of the Civil Procedure Law¹¹³ and the People's Mediation Law, review the mediation agreement, and confirm the effectiveness of the mediation agreement.¹¹⁴ Judicial confirmation shall be administered by the basic people's court where the mediation organization is located or by the court which designated the mediation to the Mediation Centre.¹¹⁵

For a court-entrusted mediation, the mediator shall submit the mediation agreement to the court, the court shall review the mediation agreement and then issue a mediation statement to the parties. The case will then be closed by the court.¹¹⁶

If there is any of the following circumstances, the court shall not confirm the effectiveness of the mediation agreement: (1) in violation of the mandatory provisions of laws and administrative regulations; (2) infringing upon the interests of the state and the public interest; (3) infringing upon the lawful rights and interests of outsiders; (4) involved in the case of whether or not to hold criminal responsibility of the parties concerned; (5) the content of the agreement is not clear and cannot be confirmed and executed; (6) mediation organizations or mediators forcing mediation or other serious violations of professional ethics; and (7) other circumstances under which the agreement cannot be confirmed.¹¹⁷

Where the parties have entered into a mediation agreement against his will, or the mediator has an interest in the case and the mediation is unfair, the people's court shall not confirm the validity of the mediation agreement, with the exception that the parties know these situations and still insists on applying for confirmation.¹¹⁸

The mediation agreement confirmed by the court or the mediation statement issued by the court is enforceable. If one party fails to honor his promise, the other party can apply to the court for enforcement.¹¹⁹

After the mediation statement becomes legal binding, if one party can show evidence that the mediation was conducted against the principle of voluntariness, or the content of the

¹¹² The Civil Procedure Law, art, 195.

¹¹³ Articles 194 and 195.

¹¹⁴ The SPC and the CIRC Opinions 2016, s.9(4).

¹¹⁵ The Provisions of the SPC on People's Court Invited Mediation 2016, art.19.

¹¹⁶ The Provisions of the SPC on People's Court Invited Mediation 2016, art.20.

¹¹⁷ The Several Opinions of the SPC on Establishing and Improving the Linkup of Litigation and Non-litigation Mechanism for Resolution of Contradiction and Disputes 2009, art.24.

¹¹⁸ Ibid.

¹¹⁹ The Provisions of the SPC on People's Court Invited Mediation 2016, art.25.

mediation agreement was in violation of law, the party can apply for rehearing of the case. If it is proved to be true by the court, the case shall be reheard.¹²⁰

Other matters of the LLMS

In the SPC and the CIRC Opinions 2016, in addition to the requirements of establishment and improvement of the platform and the procedure of the LLMS, the SPC and the CIRC require the courts, Insurance Regulatory Bureaus and Insurance Associations in China to carry out a number of other relevant duties.

(A) Financial resources

The courts and the Insurance Regulatory Bureaus should actively seek financial resources from the local government to support the practice of the LLMS. The Insurance Associations are encouraged to increase the membership fees to raise funds and/or to charge the members on the basis of the number of disputes resolved by the LLMS.¹²¹ Currently, some Insurance Mediation Centres provide mediation service free of charge to the disputants.¹²² In some cities, the Insurance Associations set out rules for the administration of funds for the LLMS. For example, Beijing Insurance Association issued “Methods of Administration of Funds for Insurance Mediation”.¹²³

(B) Communication

The courts, the Insurance Regulatory Bureaus and Insurance Associations shall jointly hold, on a regular basis, meetings to discuss progress of the expansion of the LLMS, to coordinate mediation of typical and major cases, and to promote an effective development of the LLMS. They shall also contact daily to coordinate specific cases and resolve problems encountered and to improve the quality and efficiency of the work.¹²⁴

(C) Information sharing

The courts, the Insurance Regulatory Bureaus and Insurance Associations shall improve the system for the management of information and statistical analyses of the data about the LLMS, and regularly exchange relevant information and data. The court shall issue judicial suggestions to the Insurance Regulatory Bureaus and the Insurance Associations for the common problems of the insurance disputes found in trial.¹²⁵

(D) Guidance for complex and difficult disputes

¹²⁰ The Civil Procedure Law, art.201.

¹²¹ The SPC and the CIRC Opinions 2016, s.17.

¹²² For example, Qingdao Insurance Dispute Mediation Centre does not charge to the parties in dispute. See the newspaper, Qingdao Finance and Economics Daily 12 March 2015 (<http://mt.sohu.com/20150312/n409709825.shtml>, accessed on 22 Feb 2017).

¹²³ China Insurance Newspaper on 12 May 2015 (http://pl.sinoins.com/2015-05/12/content_154597.htm, accessed on 3 March 2017).

¹²⁴ The SPC and the CIRC Opinions 2016, s.12.

¹²⁵ The SPC and the CIRC Opinions 2016, s.13.

The Insurance Mediation Centres may consult the courts on the difficult issues encountered in the course of the mediation of insurance disputes and the application of relevant law, and the people's court shall promptly give guidance and reply.¹²⁶

(E) Application of information technology

The courts, the Insurance Regulatory Bureaus and Insurance Associations shall actively apply the information technology to support the practice of the LLMS. They should explore the model of online mediation by Internet.¹²⁷ For example, the courts in Chongqing City use WeChat¹²⁸ as a platform for the judges to guide the mediators' work online.¹²⁹

(F) Dissemination and education

The courts, the Insurance Regulatory Bureaus and Insurance Associations should guide the parties to resolve disputes through mediation. The court shall inform the parties of the relevant information about the LLMS. The Insurance Regulatory Bureaus and the Insurance Associations shall urge the insurance companies to add the content of the dispute resolution into the reminder to proposers, the claim notice, the complaint handling notice and the insurance contract.¹³⁰

The courts, the Insurance Regulatory Bureaus and the Insurance Associations should increase publicity efforts. The court shall place information about the LLMS into the legal publicity system. The Insurance Regulatory Bureaus and the Insurance Associations shall place the information about the LLMS into the consumer education system, and enhance the general public's awareness, trust and participation of the LLMS.¹³¹

The application of the LLMS for insurance disputes resolution

Since the publication of the "Notice on Carrying out Pilot Work of Establishing the Mechanism for Linking Litigation with Mediation for Insurance Disputes in Some Regions of China" by the SPC and the CIRC in December 2012 to November 2016 when the SPC and the CIRC decided to promote the establishment of the LLMS nationwide in China, about 166 cities in China established the LLMS,¹³² resolving approximately 160,000 insurance cases through the LLMS during the period in the whole country.¹³³ It would be helpful to take Qingdao Insurance Dispute Mediation Centre as an example to see how the LLMS is applied to resolve insurance disputes.

¹²⁶ The SPC and the CIRC Opinions 2016, s.14.

¹²⁷ The SPC and the CIRC Opinions 2016, s.15.

¹²⁸ WeChat is a free, cross-platform and instant messaging application developed by Tencent. WeChat has over a billion created accounts, 700 million active users; with more than 70 million outside of China. WeChat supports different ways of instant message, including text message, voice message, walkie talkie and stickers. Users can send previously saved or live pictures and videos, namecards of other users, coupons, lucky money packages, or current GPS location with friends either individually or in a group chat.

¹²⁹ See the People's Court Newspaper, 28 Feb 2016

(<http://www.chinacourt.org/article/detail/2016/02/id/1811955.shtml>, accessed on 23 Feb 2017).

¹³⁰ The SPC and the CIRC Opinions 2016, s.19.

¹³¹ The SPC and the CIRC Opinions 2016, s.20.

¹³² The Media Conference by the SPC on 14 November 2016

(<http://www.chinacourt.org/article/detail/2016/11/id/2348597.shtml>, accessed on 3 March 2017).

¹³³ The newspaper of 21st Century Business Herald, 15 November 2016 (http://epaper.21jingji.com/html/2016-11/15/content_50536.htm, accessed on 6 Feb 2017).

On the basis of its predecessor (Qingdao City Insurance Contract Dispute Mediation Centre), Qingdao Insurance Dispute Mediation Centre was established by Qingdao Intermediate People's Court, Qingdao Insurance Regulatory Bureau and Qingdao Insurance Association on 27 June 2013. It was the first Insurance Dispute Mediation Centre for the practice of the LLMS in Shandong Province. From the establishment of the Centre to January 2016, the Centre mediated 789 insurance cases, of which 513 cases were successfully settled (65% of the total cases mediated). All the parties involved in the 513 cases performed their duties following the mediation agreements.¹³⁴ The following 3 cases are examples.

Case 1: This case is concerned with mediation by the independent mediation centre before the insured makes a lawsuit. In 2012, Mr Wang purchased a life insurance policy.¹³⁵ He paid annual premium of ¥20,000. In 2013, he needed cash urgently so he wanted to terminate the contract and requested the refunding of the premium paid. He was told that he would receive only part of the premium paid because the insurer needed to deduct administrative cost. Mr Wang then claimed that the insurer did not explain this deduction at the time of the contract. After fruitless negotiation with the insurer, he applied to Qingdao Insurance Dispute Mediation Centre for assistance with the matter. The major issue of this case is whether the insurer had clearly explained about the deduction to him at the time of the contract. It was found that Mr Wang wrote on the proposal form that "I fully understand the terms of the contract and the rights and obligations under the contract after the explanation of the insurer". This is evidence that the insurer had explained the terms to him. After mediation, the insured and the insurer voluntarily reached an agreement that the annual premium payment was reduced from ¥20,000 to ¥10,000, with the corresponding reduction in the amount insured, and insurance contract continued to be effective. Both parties were happy with the outcome of the mediation and the mediation service costed them nothing. If the case were to be tried by the court, the insured would only receive part of the premium paid after the deduction of insurer's administrative cost and the contract would be terminated. The insurer would lose a customer. Both parties would need to pay litigation costs.

Case 2: This case is concerned with a *court-designated mediation* prior to the filing of the case by the court.¹³⁶ A logistics company insured a motor vehicle in 2013. During the insurance period, the insured vehicle collided with the third party vehicle on a motorway, causing damages to the insured vehicle. The traffic police found that the insured vehicle was responsible for the accident. Subsequently, without informing the insurer of the accident, the insured had its own vehicle repaired for the cost of ¥64,630. Then the insured claimed for insurance payment for that cost but was turned down by the insurer on the ground that the insured did not inform the insurer of the accident before having the vehicle repaired. The insured made a lawsuit to Qingdao City Southern District People's Court. With the consent of the parties, the court, prior to filing the case, designated the case to Qingdao Insurance Dispute Mediation Centre. The insured and the insurer then reached a mediation agreement that the insurer was to pay ¥57,447 to the insured. According to art.21 of the Chinese Insurance Law,¹³⁷ the insured has a duty of giving notice of occurrence of the insured event

¹³⁴ The Legal Newspaper, 6 January 2016 (<http://finance.sina.com.cn/sf/news/2016-01-06/162516035.html>, accessed on 22 Feb 2017).

¹³⁵ This case was report in the Qingdao Morning Newspaper on 28 June 2013 (see http://qd.ifeng.com/rdfs/detail_2013_06/28/942886_0.shtml, accessed on 22 Feb 2017).

¹³⁶ This case was reported at the website of Qingdao Finance and Economics on 12 March 2015. (<http://mt.sohu.com/20150312/n409709825.shtml>, accessed on 22 Feb 2017).

¹³⁷ Article 21 of the Insurance Law provide: "Where the proposer, the insured or the beneficiary knows the occurrence of an insured event, it shall notify the insurer thereof in a timely manner. Where notice is not sent in a timely manner intentionally or due to gross negligence, and as a result, the nature, cause and extent of loss of

to the insurer, otherwise the insurer is not liable for paying insurance money in respect of the portion of loss that cannot be ascertained due to the insured's failure in notifying the insurer of the occurrence of the insured event. In this case, the insured should have informed the insurer of the accident, but the insurer can only refuse to pay the loss that cannot be ascertained. Although the insured failed to notify the accident, the insurer was not totally free of liability for paying the loss. Had the case been judged by court, perhaps the similar amount of insurance payment would have been determined, but the two parties must pay litigation cost and it would take much longer for the case to be settled by court.

Case 3: This case is concerned with a *court-entrusted mediation* during the period of litigation.¹³⁸ Mr Zhuang entered into a whole life insurance policy with the coverage of critical illness for the insured amount of ¥100,000 in June 2012. The insured was diagnosed with aortic dissection aneurysm in October 2012, followed by hospitalization and lumbar anesthesia aortic dissection intracavitary surgery. In November 2012, he was discharged from the hospital with a total medical expense of ¥100,965.

Clause 8.2 in the insurance policy stipulates that aortic surgery refers to the treatment of aortic disease, the actual operation of the thoracotomy or laparotomy for resection, replacement, or repair lesions of aortic vascular surgery. The insurer refused to pay the medical expenses, claiming that the surgery was not done with the operation of thoracotomy or laparotomy, the insured was not deemed to suffer from aortic dissection aneurysm, so the disease was not taken as a critical illness covered by the policy. The insurer also attempted to prove that he had clearly explained the exclusion clause to the insured prior to the conclusion of the contract by the evidence of the insured's declaration in the proposal form which reads "I have read the insurance clauses, the product brochure and the notice to the proposer". According to art.17 of Chinese Insurance Law, the insurer has a duty to clearly explain exclusion clauses to the insurer prior to the formation of the contract, otherwise the exclusions are invalid. Clause 8.2 can be treated as an exclusion clause by courts.¹³⁹

The insured sued but lost. He appealed. The appeal court entrusted Qingdao Insurance Dispute Mediation Centre to mediate the case. The dispute was settled with the insurer's agreement to pay the insured ¥60,000.¹⁴⁰

the insured event are hard to be ascertained, the insurer shall not be liable for making indemnity payment or paying insurance benefits in respect of the portion that cannot be ascertained, but with the exception that the insurer has known in time or should have known in time the occurrence of the insured event through other channels."

¹³⁸ This case was reported at the website of Qingdao Finance and Economics on 12 March 2015. (<http://mt.sohu.com/20150312/n409709825.shtml>, accessed on 22 Feb 2017).

¹³⁹ For more on the insurer's pre-contractual duty of clear explanation of the insurance clauses to the insured, see Z. Jing, *Chinese Insurance Contract: Law and Practice* (1st edn., Informa Law from Routledge, 2017) pp287-334.

¹⁴⁰ There are two major issues in this case. The first issue is whether the insured's disease was covered by the insurance policy as a critical illness. The second is whether the insurer had explained the exclusion clause clearly to the insured at the time of the contract, if clause 8.2 is treated as an exclusion clause. Although clause 8.2 defines the "aortic surgery" as the actual operation of "thoracotomy" or "laparotomy", the purpose of aortic surgery is to treat aortic disease; the surgery does not have to be "thoracotomy" or "laparotomy". The minimally invasive surgery (a modern and advanced method) is a better method for the treatment of aortic disease. The choice of method for surgery should be determined by the doctor according to the patient's condition and the available medical technology. If the method used for the treatment of the disease is taken as the identification of the disease, it would be contrary to the purpose of the insurance contract, in particular, against the insured's reasonable expectations. So clause 8.2 is a narrow definition of the aortic disease and thus can be treated as an exclusion clause. Moreover, the insured's declaration "I have read the insurance clauses, the

These cases explain how the LLMS is applied to resolve insurance disputes, and some of the advantages of the LLMS. More advantages are discussed below.

The advantages of the LLMS

The people's courts, insurance regulators and insurance industry associations form a concerted effort to resolve insurance disputes in a more efficient and diversified way on the platform of LLMS, which inherits the advantages of industry mediation and judicial mediation and overcomes the shortcomings of industry mediation and judicial mediation. Because of the linkup of litigation and mediation and their interaction, the LLMS gains additional advantages over the separate industry mediation and judicial mediation.

First, the LLMS is quick. The time limit for resolving an insurance dispute by LLMS is 20 days.¹⁴¹ This is considerable less than the 6-month limit for litigation of a civil case,¹⁴² or 3-month for a simple litigation procedure,¹⁴³ or the 3-month limit for a second trial.¹⁴⁴ For example, Henan Xuchang Insurance Disputes Mediation Centre took only 15 days to settle an insurance dispute; In Ningbo City, the time for resolving road traffic accident cases reduced from original 35 days by litigation to 8.5 days by the LLMS; Kunming City Insurance Dispute Mediation Centre settled an insurance case in 5 days.¹⁴⁵ Jiangsu Province Insurance Industry Association Mediation Centre recently settled a traffic accident insurance dispute in about 30 minutes.¹⁴⁶ In this case, Mr Li had a road accident and injured Mr Wang on a bicycle. Mr Li was fully responsible. Mr Wang sued Mr Li for medical costs of ¥390,000. The court entrusted the case to the Insurance Mediation Centre where the two parties reached a mediation agreement in 30 minutes. The court issued a mediation statement. The application of the LLMS has greatly shortened the time for resolving an insurance dispute.

Secondly, the LLMS is flexible. The flexibility can be seen at all stages of the application of the LLMS. At the pre-litigation stage, an insurance dispute can be resolved by an independent insurance mediation centre. After a lawsuit was made but prior to the filing of the case, the court can designate an insurance mediation centre to mediate the case. During the period of trial, the court can entrust an insurance mediation centre to mediate the case, or invite an independent mediator to join the court for mediating the case. If the mediation fails, court shall adjudicate the case without delay. The place where the mediation takes place is flexible, it can be at a court, or at a mediation centre, or at any other place with the approval of the court.¹⁴⁷ The way of mediating a dispute is flexible: it can be facilitative, evaluative, or advisory. The form of mediation agreement is flexible: it can be oral or in writing; it can be in the form of a contract; or it can be confirmed by a court.

product brochure and the notice to the proposer" cannot be used as evidence for the insurer's clear explanation of the exclusion clause. The insured's reading of the clause cannot replace the insurer's explanation. In the end, this case is settled through mediation, effectively resolving the dispute and achieving the balance of the interests of the two parties.

¹⁴¹ The SPC and the CIRC Opinions 2016, s.11.

¹⁴² The CPL, art.135.

¹⁴³ The CPL, art.146.

¹⁴⁴ The CPL, art.159.

¹⁴⁵ China Insurance Newspaper on 12 May 2015 (http://pl.sinoins.com/2015-05/12/content_154597.htm, accessed on 3 March 2017).

¹⁴⁶ People's Court Newspaper on 28 February 2016 (<http://www.chinacourt.org/article/detail/2016/02/id/1811955.shtml>, accessed on 23 Feb 2017).

¹⁴⁷ The Provisions of the SPC on People's Court Invited Mediation 2016, art.14.

Thirdly, the LLMS is efficient and effective. A mediation agreement has the effect as a contract, so it is not as enforceable as a court judgement. Therefore, the compliance with the mediation agreement by the parties is not guaranteed. Through the LLMS, the parties of a mediation agreement can apply to the court for judicial confirmation of the agreement. Once the agreement has been confirmed, it can be enforced.¹⁴⁸ The confirmation of the mediation agreement by court has significantly increased the effectiveness of the mediation agreement. For a court-entrusted mediation, upon receiving the mediation agreement from the mediator, the court shall issue a mediation statement to the parties, which is as enforceable as the judgment by the court.¹⁴⁹ In the case of failure in mediation, the case will be adjudicated by the court, so there is no gap between mediation and litigation. The close connection and interaction between a mediation centre and a court have greatly enhanced the efficiency of dispute resolution by the LLMS. As mentioned earlier, the major drawback for judicial mediation is the compromise of the confidentiality of the mediation, due to the dual roles of a judge as a mediator and as an adjudicator, it is almost impossible to keep mediation confidential. The separation of mediation and adjudication for the same case in terms of procedure and personnel in the LLMS effectively overcomes the drawback of the traditional judicial mediation. The court-designated and court-entrusted mediation directs most insurance disputes to the insurance mediation centres, reduces the flow of cases to judicial mediation or litigation, and consequently effectively alleviates the case-load to the courts. For example, In Ningbo City, court-designated mediation prior to filing of the cases resolved 3,609 insurance disputes, achieving a successful rate of 88.7% of the total 4069 cases designated to the insurance mediation centre in 17 months from January 2013 to May 2014.¹⁵⁰ About 73.2% of the insurance cases were withdrawn from Shanghai Second Intermediate People's Court (and the courts under it) in 2013, thanks to the court-entrusted mediation.¹⁵¹

Finally, the LLMS is inexpensive. For insurance consumers, the insurance mediation centres do not charge for the service provided.¹⁵² For insurance companies, some mediation centres do not charge for the service provided, but the insurance companies must pay membership fee to the insurance industry association. Some other mediation centres charge the insurance companies on the number of cases handled by the centres.¹⁵³ In comparison, the LLMS costs much less to the insured and insurer than the litigation.

All relevant parties can benefit from the LLMS. It benefits the insured by resolving disputes without the cost, time and resources needed for a trial. It benefits the third party claimant because he receives his compensation quicker than he would have had it gone to trial. It benefits the insurer because it will not incur litigation expenses and the claim can be closed without harming the insurer's reputation. It benefits the courts by reducing its docket load and by concluding more cases than it would have been able to. In addition, it benefits the Insurance Regulatory Bureaus by reducing consumers' complaints to them. For example, the

¹⁴⁸ The Provisions of the SPC on People's Court Invited Mediation 2016, art.25(2).

¹⁴⁹ Ibid.

¹⁵⁰ China Insurance Newspaper on 12 May 2015 (http://pl.sinoins.com/2015-05/12/content_154597.htm, accessed on 3 March 2017).

¹⁵¹ Ibid.

¹⁵² For example, Qingdao Insurance Dispute Mediation Centre does not charge to the parties in dispute. See the newspaper, Qingdao Finance and Economics Daily 12 March 2015 (<http://mt.sohu.com/20150312/n409709825.shtml>, accessed on 22 Feb 2017).

¹⁵³ China Insurance Newspaper on 12 May 2015 (http://pl.sinoins.com/2015-05/12/content_154597.htm, accessed on 3 March 2017).

insureds' complaints to Ningbo City Insurance Regulatory Bureau in 2014 reduced 23% than in 2013.¹⁵⁴ Above all, it is conducive to social harmony and stability.

The way forward for further improvement of the LLMS

The success of the mediation largely depends on qualified and skillful mediators. The parties should seek to identify a mediator who has a clear understanding of the key issues. The mediator who understands the complexities and purposes of different types of insurance coverage, and the variance in policy interpretation would be better equipped to assist the parties in reaching a settlement. Thus successful expansion of the LLMS in a nationwide scale needs a large number of qualified, experienced and skillful mediators. However, at present, both the number and the qualification of the mediators for insurance mediation are inadequate; it is difficult to meet the needs for the expansion of the LLMS in the whole country. For the time being, the mediators come mainly from insurance companies engaged in underwriting, claims handling, loss adjusting, or customer service within the insurance industry, so they have sufficient knowledge of insurance related matters, but less on legal matters;¹⁵⁵ while mediator from legal profession may have sufficient knowledge and experience in legal issues but less in insurance expertise, mediators from other profession may not possess sufficient knowledge and experience in insurance matters and legal issues. Although mediators from insurance companies are familiar with insurance business, their credibility is insufficient. The mediators from other professions may have higher credibility, but most of them are not familiar with insurance practice. Another issue is remuneration of the mediators. Because the budget and funding for the insurance mediation centres are relatively tight, subsidy to a mediator is low. This would adversely affect the enthusiasm of a mediator to participate in mediation work.

Therefore, the major task for further improving the LLMS in the future is to strengthen the construction of the mediator teams. Accordingly, selection criteria for recruiting mediators must be clearly established and strictly followed. The SPC should regularly provide training to the mediators, so as to improve the mediators' professional knowledge, mediation skills and professional ethics. The remuneration of the mediators must be improved to establish incentives to the mediators so as to improve their enthusiasm.

In the future, it is also important to increase the effort for the publicity of the LLMS so as to make the insurance consumers know of its features, its advantages, and the way of how the LLMS works for resolving a dispute. Only when the insurance consumers become fully aware of the LLMS, will they actively seek to take part in the LLMS, consequently, the expansion and further development of the LLMS in a nationwide scale will become successful.

Conclusion

The LLMS is a new and unique mechanism which links insurance industry mediation with judicial mediation and adjudication to form a connected and interactive platform for resolving insurance disputes. The LLMS inherits the advantages of industry mediation and judicial mediation, overcomes the shortcomings of industry mediation and judicial mediation, and

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

gains additional advantages. It has been proved to be a quick, flexible, inexpensive, efficient and effective mechanism for resolving insurance disputes. The LLMS has a number of unique features:

First, insurance disputes can be resolved by independent insurance mediation centres before the disputants seek litigation. The mediation agreement reached by the parties through an Insurance Mediation Centre can be confirmed by court. The judicially confirmed mediation agreement is as enforceable as court judgement. This greatly enhances the effectiveness of the mediation agreement. This can be viewed as the first linkup of litigation with mediation.

Secondly, insurance disputes can be mediated after a lawsuit has been submitted but prior to the filing of the case; this so called *court-designated mediation* directs the flow of insurance disputes to the Insurance Mediation Centres. This can reduce the number of disputes entering into litigation and saves a great deal of judicial resources. This can be viewed as the second linkup of litigation with mediation.

Thirdly, even if an insurance dispute has been docketed or entered into trial, the dispute can still be directed to an Insurance Mediation Centre with the willingness of the two parties. The mediation agreement can be converted to mediation statement by the court which is enforceable. Consequently, judicial mediation is, to a large extent, replaced by the court-entrusted mediation, i.e. a delegation of court's mediation power to a third party mediation centre. This again greatly reduces the case-load to the courts. This so called *court-entrusted mediation* can be viewed as the third linkup of litigation with mediation.

It is envisaged that the major task for further improving the LLMS in the future is to strengthen the construction of the mediator teams. There is no doubt that the LLMS will expand nationwide and be further improved gradually and steadily in the future in China.